

DEC 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD RITESH PRASAD,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74434

Agency No. A78-640-712

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Ronald Ritesh Prasad, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to remand, and adopting and affirming an immigration judge's ("IJ") decision denying his

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

applications for asylum, withholding of removal and relief under the Convention Against Torture. We have jurisdiction under 8 U.S.C. § 1252. We review the denial of a motion to remand for abuse of discretion, *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003), and review due process claims de novo, *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003). We deny the petition for review.

The BIA acted within its discretion in denying Prasad's motion to remand because the evidence submitted with the motion was insufficient to overcome the presumption that his marriage was not bona fide. *See Malhi*, 336 F.3d at 993-94 (motion to remand to adjust status premised on a marriage entered into during proceedings must present clear and convincing evidence indicating a strong likelihood that the marriage was bona fide).

Prasad's contention that the BIA violated 8 C.F.R. § 1003.1(d)(3) by improperly reviewing facts and engaging in fact finding is not persuasive because the evidence of his marriage was presented in the context of the motion to remand. *See* 8 C.F.R. § 1003.1(d)(3)(i) & (iv) (limiting the BIA's authority to review an IJ's findings of fact and make its own findings of fact in the context of deciding an appeal).

We are unpersuaded by Prasad's contention that the BIA failed to articulate the basis for its decision. The BIA specifically adopted a part of the IJ's decision denying his applications for asylum, withholding of removal and relief under the

CAT, *see Molina-Estrada v. INS*, 293 F.3d 1089, 1093 (9th Cir. 2002), and provided specific and cogent reasons for denying the motion to remand, *cf. Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005).

PETITION FOR REVIEW DENIED.